

**STANDARD AGREEMENT**

STD. 213 (NEW 06/03)

Sample Standard Agreement

Attachment 16

AGREEMENT NUMBER

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

State Energy Resources Conservation and Development Commission (Energy Commission)

CONTRACTOR'S NAME

2. The term of this Agreement is: \_\_\_\_\_ to \_\_\_\_\_ The effective date of this Agreement is either the start date or the approval date by the Dept. of General Services, whichever is later. No work shall commence until the effective date.

3. The maximum amount of this Agreement is: \$ \_\_\_\_\_

4. The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the Agreement:

**Exhibit A** – Scope of Work

Pages

Exhibit A - Attachments

Pages

**Exhibit B** – Budget Detail and Payment Provisions

Pages

Exhibit B - Attachments

Pages

**Exhibit C\*** – General Terms and Conditions

GTC 610

Check mark one item below as Exhibit D:

☒ Exhibit D – Special Terms and Conditions

Pages

☐ **Exhibit D** - \*Special Terms and Conditions**Exhibit E** – Additional Provisions

Pages

Exhibit E - Attachment

**Exhibit F** – Contacts

Page

**Exhibit G** - Definitions

Pages

**Exhibit H** - Subcontract Flow-Down Provisions

Pages

**Exhibit I** - Federal Funding Language

Pages

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard%20Language/default.htm>.

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

**CONTRACTOR****California Department of General Services Use Only**

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

**STATE OF CALIFORNIA**

AGENCY NAME

State Energy Resources Conservation and Development Commission (Commission)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

1516 Ninth Street, Sacramento, CA 95814

☐ Exempt per:

## **Exhibit A Scope Of Work**

This page will be replaced by the Scope of Work proposed by the winning bidder.

**EXHIBIT B****Budget Detail and Payment Provisions****1. INVOICING PROCEDURES**

A. For services satisfactorily rendered, and upon receipt and approval of invoices, the Energy Commission agrees to compensate the Contractor for actual allowable expenditures incurred in accordance with Exhibit B, Budget Attachment. The rates in Exhibit B, Budget Attachment, are rate caps, or the maximum amount allowed to be billed. The Contractor can only bill for actual expenses incurred for hours worked at the Contractor's actual direct labor, fringe, and indirect rates, not to exceed the rates specified in Exhibit B, Budget Attachment.

B. Invoices shall be submitted in duplicate not more frequently than monthly. The following certification shall be included on each invoice and signed by an authorized official of the contractor:

*I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received from any other sources, including but not limited to a Government Entity contract, subcontract or other procurement method.*

C. Unless otherwise authorized in writing by the Energy Commission's Contracts Officer, the Contractor shall use the sample invoice format located on the Energy Commission's Web Site: [www.energy.ca.gov/contracts/index.html](http://www.energy.ca.gov/contracts/index.html).

D. The Energy Commission will accept computer generated or electronically transmitted invoices, provided the Contractor sends a paper copy the same day to the Energy Commission. The date of "invoice receipt" shall be the date the Energy Commission receives the paper copy.

Send invoices to:

California Energy Commission  
Accounting Office, MS-2  
1516 Ninth Street  
Sacramento, California 95814

E. Unless otherwise authorized in writing by the Energy Commission's Contracts Officer, a request for payment shall consist of, but not be limited to, the following:

- 1) Agreement number, date prepared, and billing period.
- 2) Work Authorization number, if applicable.
- 3) The Contractor's actual unloaded hourly labor rates by individual.
- 4) Operating expenses, including equipment, travel, miscellaneous, and materials.
- 5) Subcontractor expenditures.

- 6) An indication of whether a subcontractor is a California Certified Small Business or a Certified Disabled Veteran Business Enterprise.
  - 7) Fees (fringe, direct and indirect overheads, general and administrative, profit, etc.). Identify actual, agreement, and billed amounts.
  - 8) Match fund expenditures, if applicable.
  - 9) By task: cumulative amounts, budgeted per agreement, billed to date, current billing, and balance of funds.
  - 10) **Any additional information requested by the federal agency that manages the contract supplying the funds to the Energy Commission to pay for this Agreement. Contractor acknowledges that not providing this additional information could impair the Commission's ability to receive funds to pay for this Agreement. If Contractor does not supply the needed information for the Commission to receive funds under its contract with the federal agency, the Commission has no obligation to pay Contractor under this Agreement.**
- F. Unless otherwise authorized in writing by the Energy Commission's Contracts Officer, all invoices must be accompanied by the following material to support the expenditure:
- 1) Subcontractor invoices.
  - 2) Receipts for travel expenses, including departure and return times.
  - 3) Receipts for materials, miscellaneous, and/or equipment.
  - 4) A report that documents the progress of the work during the billing period; and
  - 5) Any other deliverables due during the billing period.
  - 6) **Same as E (10) directly above.**

## 2. **BUDGET CONTINGENCY CLAUSE**

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other consideration under this Agreement, and the Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Contractor to reflect the reduced amount.

### 3. **TRAVEL AND PER DIEM RATES**

The Contractor shall be reimbursed for travel and per diem expenses using the Energy Commission Contractor Travel Rates. The Contractor must pay for travel in excess of these rates. The Contractor may obtain current rates from the Energy Commission's Web Site at: [http://www.energy.ca.gov/contracts/TRAVEL\\_PER\\_DIEM.PDF](http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF).

- A. Travel identified in Exhibit B, Pre-Approved Travel List is approved and does not require further authorization.
- B. Travel that is not included in Exhibit B, Pre-Approved Travel List shall require written authorization from the Contract Manager and Contracts Officer prior to travel departure. The Energy Commission will reimburse travel expenses from the Contractor's office location.
- C. The Contractor must retain documentation of travel expenses in its financial records. The documentation must be listed by trip and include dates and times of departure and return. Travel receipts, including receipts for travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission.

### 4. **RETENTION**

The Energy Commission shall retain from each invoice ten per cent (10%) of that invoice, excluding equipment invoices, pursuant to Public Contract Code section 10346. The retained amount shall be held and released only upon approval that work has been satisfactorily completed and the Final Report (if required) has been received and approved. The Contractor must submit a separate invoice for the retained amount. Retained funds may be withheld by the Energy Commission to compensate or credit for amounts that were paid in error, or amounts that were paid but exceed the actual allowable incurred costs.

Retention may be released upon completion of tasks that are considered separate and distinct (i.e., the task is a stand-alone piece of work and could be completed without the other tasks). Exhibit B, Budget Attachment, identifies the tasks for which retention may be released prior to the end of the Agreement. Tasks for administration or management of the Agreement and/or subcontractors are not considered separate and distinct tasks.

**5. PAYMENT TERMS****Check all that apply:**

- ☐ Monthly
- ☐ Quarterly
- ☐ One-Time Payment
- ☐ Itemized
- ☐ Flat Rate
- ☐ In Arrears
- ☐ Advance Payment to Public Prime Contractor Not to Exceed \$\_ or \_\_\_\_ % of the Agreement Amount
- ☐ Advance Payment to Private Prime Contractor for Public Subcontractor, (PRC section 25620.3(d)) Not to Exceed \$\_\_\_\_\_ or \_\_\_\_% of the Subcontract Amount
- ☐ Reimbursement/Revenue
- ☐ Other (Explain)

**6. CONDITIONS FOR PAYMENT**

- A. No payment shall be made in advance of services rendered.
- B. Payment shall only be made in accordance with Exhibit B, Budget Attachment.
- C. The Contractor is not allowed to profit from its subcontractors' costs. Subcontractors are not allowed to profit from their subcontractors' costs.
- D. Each request for payment is subject to the Contract Manager's approval.
- E. Payments shall be made to the Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered, and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, Contractor will be notified via a Dispute Notification Form within 15 working days of receipt of the invoice.
- F. Payment will be made in accordance with, and within the time specified, in Government Code Chapter 4.5, commencing with Section 927, which requires payment of properly submitted, undisputed invoices within 45 days of receipt or automatically pay late payment penalties when applicable.
- G. Final invoice must be received by the Energy Commission no later than 30 calendar days after the Agreement termination date.
- H. No payment will be made for costs identified in contractor invoices that has or will not be reimbursed by other source, including but not limited to a Government Entity contract or subcontract or other procurement method.

**7. BUDGET REALLOCATIONS**

- A. The Energy Commission, through its Contract Manager and Contract Officer, and the Contractor can agree upon and make certain budget reallocations without a

formal amendment to this Agreement as long as ALL of the following conditions are met:

- 1) For agreements without work authorizations, the total of all budget reallocations cannot exceed ten percent (10%) with a cap amount of \$75,000 of the Agreement Amount. For purposes of this provision, "Agreement Amount" means the total amount of Energy Commission funds being paid to Contractor under this Agreement. It does not include any match funds provided by Contractor.

For example, if under an agreement the Energy Commission agrees to pay a contractor \$100,000 and the contractor is supplying \$500,000 in match funding, the ten percent (10%) limitation applies to the \$100,000. Only up to \$10,000 of Energy Commission funds can be reallocated without a formal amendment. If under an agreement the Energy Commission agrees to pay a contractor \$800,000, ten percent would be \$80,000, but the cap is \$75,000, so the most that could be reallocated without a formal amendment is \$75,000.

For agreements with work authorizations, budget reallocations up to ten percent (10%) with a cap of \$75,000 of the entire agreement can be made. Budget reallocations up to ten percent (10%) of each work authorization can be made so long as the total amount of all work authorization budget reallocations does not exceed 10 percent of the agreement amount and is within the cap of \$75,000. For example, assume an Agreement Amount is \$175,000 and the agreement has two work authorizations, WA1 and WA2. WA1 has a budget of \$100,000, and WA2 has a budget of \$50,000. \$10,000 (10% of \$100,000) can be moved within WA1. \$5,000 (10% of \$50,000) can be moved within WA2. In addition to this, \$2,500 (10% of \$25,000, the Agreement Amount of \$175,000 minus the combined work authorization budgets of \$150,000) can be made to the portion of the Agreement Amount not associated with work authorizations. The total of these budget reallocations does not exceed ten percent of the total agreement amount or the \$75,000 cap.

- 2) The budget reallocation cannot substantially change the Scope of Work. Examples of budget reallocations that do not substantially change the Scope of Work include, but are not limited to, the following:
  - Increasing or decreasing the overall travel budget. This does not mean an increase to the allowed per diem rates under this Agreement.
  - Increasing or decreasing the equipment budget.
  - Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the hourly rates of the personnel and classifications listed in the budget. Increasing hourly rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.

- 3) The budget reallocation only involves moving funds between tasks, line items, or categories. The total Agreement Amount and the total budget of any work authorizations must remain unchanged. Increasing the total amount of the Agreement requires a formal amendment.
  - 4) The budget reallocation does not increase the percentage rate of Indirect Overhead, Direct Overhead, Fringe Benefits, General and Administrative Costs, Profit, or any other rates listed in the budget. For example, if an agreement budget lists the Indirect Overhead percentage rate as 25% of Direct Labor, the 25% cannot be changed without a formal amendment. Another example is that if a contractor listed that its profit rate is 8% of the total agreement, to increase this rate would require a formal amendment.
- B. To effectuate a budget reallocation under this section, the Contractor must make a request in writing to both the Contract Manager and the Contract Officer. Both the Contract Manager and Contract Officer will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the Contract Manager and the Contract Officer. Oral communications cannot be used or relied upon. If the request is approved, the Contract Manager shall revise the Budget Attachments to reflect the changes and send them to the Contract Officer and Contractor.
  - C. Any desired budget reallocations that do not meet the four criteria in this section must be made through a formal amendment. For purposes of this provision, a “formal amendment” means that all of the following must occur: approval by the Energy Commission at a Commission Business Meeting, a written amendment signed by both parties, and approval by the California Department of General Services.
  - D. Attempted budget reallocations that do not meet the requirements of this section are not legally binding upon the parties.

8. **RECORDKEEPING, COST ACCOUNTING AND AUDITING**

A. Cost Accounting

The Contractor agrees to keep separate, complete, and correct accounting of the costs involved in developing, installing, constructing, and testing of Project-Related Products and Rights funded under the Energy Commission-funded portion of this Agreement.

The Contractor also agrees to keep separate, complete, and correct account of the Economic Benefits from Project-Related Products and Rights.



B. Accounting Procedures

The Contractor's costs shall be determined on the basis of the Contractor's accounting system procedures and practices employed as of the effective date of this Agreement. The Contractor's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement shall be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and provided, further, that such costs may be accumulated and reported in greater detail during performance of this Agreement.

The Contractor's accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

C. Allowability of Costs

Except as provided for in this Agreement, the Contractor shall use the applicable Federal Office of Management and Budget (OMB) Circulars A-87, A-21, A-122, or Federal Acquisition Regulations (FAR) Part 31 in determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the OMB Circulars and/or FAR. Factors to be considered in determining whether an individual item of cost is allowable include: (i) reasonableness of the item; (ii) allowability of the item to the work; (iii) the appropriate use of applicable Federal OMB Circulars or FAR; and (iv) the terms and conditions of this Agreement. Applicable OMB circulars and FAR may be found at [www.whitehouse.gov/omb](http://www.whitehouse.gov/omb) and [www.arnet.gov/far/](http://www.arnet.gov/far/).

1) Allowable Costs

Allowable costs may include all costs, direct and indirect, incurred in the performance of work identified in the Contractor's proposal, if applicable and if capped as specified in Exhibit B, Budget Attachment. Costs must be incurred within the term of the Agreement. The Energy Commission will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Energy Commission pursuant to this Agreement.

2) Unallowable Costs

Examples of unallowable costs include: contingency costs, imputed costs, fines and penalties, losses on agreements, excess profit taxes, and increased rates and fees for this Agreement.

The Contractor is not allowed to profit from its subcontractors' costs. Subcontractors are not allowed to profit from their subcontractors' costs.

The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages.

D. Audit Rights

The Contractor shall maintain books, records, source documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in performing this Agreement. The Energy Commission, an agency of the State or, at the Energy Commission's option, a public accounting firm designated by the Energy Commission, may audit such accounting records at all reasonable times with prior notice by the Energy Commission. The Energy Commission shall bear the expense of such audits. It is the intent of the parties that such audits shall ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years following payment by the Energy Commission of the Contractor's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit.

E. Audit Cost

The cost of the audit shall be borne by the Energy Commission except when the results of the audit reveal an error detrimental to the Energy Commission that exceeds ten percent (10%) of the amount audited, or \$5,000 (whichever is greater); or if a royalty audit, ten percent (10%) of the total royalties due in the period audited. In this event, the Contractor agrees to reimburse the Energy Commission for reasonable costs and expenses incurred by the Energy Commission in conducting such audit.

F. Refund to the Energy Commission

If the Energy Commission determines that any invoiced and paid amounts exceed the actual allowable and incurred costs, the Contractor shall repay such amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed to in writing by the Energy Commission and the Contractor. If the Energy Commission does not receive such repayments, the Energy Commission shall be entitled to withhold further payments to the Contractor.

9. **BUDGET DETAIL**

Budget Detail is contained in the Attachment to this Exhibit.

## **EXHIBIT D**

### **Special Terms and Conditions**

#### **1. AGREEMENT MANAGEMENT**

- A. The Contractor Project Manager may not be replaced without Contract Manager's prior written approval. Such approval shall not be unreasonably withheld. The Contractor Project Manager is responsible for the day-to-day Project status, decisions and communications with the Contract Manager.
- B. The Energy Commission may change the Contract Manager at any time and will send a written notice to the Contractor signed by the Contract Officer. The Contract Manager is responsible for the day-to-day Agreement status, decisions and communications with the Contractor Project Manager. The Contract Manager will review and approve all Project deliverables, reports and invoices.

#### **2. STANDARD OF PERFORMANCE**

Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in scientific and engineering research fields. Any costs for failure to meet these standards, or otherwise defective services, which require re-performance, as directed by Contract Manager or its designee, shall be borne in total by the Contractor/subcontractor and not the Energy Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply. Nothing contained in this clause is intended to limit any of the rights or remedies that the Energy Commission may have under law.

- A. Contractor/subcontractor will re-perform, at its own expense, any task that was not performed to the reasonable satisfaction of the Contract Manager. Any work re-performed pursuant to this clause shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission.
- B. The Contract Manager shall provide a new schedule for the re-performance of any task pursuant to this clause in the event that re-performance of a task within the original time limitations is not feasible.
- C. If the Contract Manager directs the Contractor not to re-perform a task, the Contract Manager and Contractor Project Manager shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.
- D. The failure of a Project to achieve the technical or economic goals stated in the Scope of Work is not a basis for the Energy Commission to determine that the work is unacceptable, unless the work conducted by the Contractor/subcontractor is deemed by the Energy Commission to have failed the foregoing standard of performance.

- E. In the event that Contractor/subcontractor fails to perform in accordance with the foregoing standard of performance, the Contract Manager and the Contractor Project Manager shall seek to negotiate in good faith an equitable resolution satisfactory to both parties. If such a resolution cannot be reached, the parties shall work through the Energy Commission's dispute resolution process described in the Disputes clause.

### **3. PERSONNEL AND SUBCONTRACTORS**

A. Key Personnel

Contractor's Key Personnel may not be substituted without the Contract Manager's prior written approval. Such approval shall not be unreasonably withheld.

B. Key Subcontractors

Contractor's Key Subcontractors may not be substituted without the Contract Manager's prior written approval. Such approval shall not be unreasonably withheld.

C. Agreements with Subcontractors

If subcontractors are needed to perform any portion of this Agreement, the following criteria must be met and Contractor shall manage the performance of the subcontractors.

- 1) Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the State and any subcontractors, and no subcontractors and no subcontract shall relieve Contractor of his responsibilities and obligations hereunder. Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- 2) Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Energy Commission staff, and submitting completed products to the Contract Manager.
- 3) Contractor shall not allow any subcontractor to assign any portion of a subcontract related to this Agreement to a third party or subsequent tier subcontractor (lower tier subcontractor) without first obtaining the written consent of the Contract Manager and following the procedures below "Process for Additions, Removal or Substitutions of Subcontractors".
- 4) All subcontracts entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of State Audits for a period of three (3) years after final payment under the Agreement.

- 5) Upon request by the Contract Manager or Contract Officer, Contractor shall provide copies of all contractual agreements with subcontractors and lower tier subcontractors.
  - 6) Upon the termination of any subcontract or lower tier subcontract, Contractor shall notify the Contract Manager and Contract Officer immediately in writing.
  - 7) In addition to any other flow-down provisions required by this Agreement (including any that apply from the federal agency's agreement with the Energy Commission supplying the funds for this Agreement – See Exhibit I), all subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C) and in 4 above; 2) further assignments shall not be made to any lower tier subcontractor without written consent of the Contract Manager; and 3) the confidentiality provisions in the Reports paragraph of this Agreement. Some, but not all, of the flow-down provisions that Contractor shall include in its subcontracts are detailed in Exhibit H.
- D. Process for Offering Work; Process for Adding or Substituting People Listed in the Agreement
- If the Energy Commission or Contractor requires the replacement or substitution of a person listed in the contract to provide a particular service, or requires that a new person is added, the Contractor shall:
- 1) First offer the work to qualified persons already listed in this Agreement (either an employee of Contractor or a subcontractor).
  - 2) If there is no available person listed in this Agreement who can perform the work, then Contractor shall provide documentation from all the persons who were offered and declined the work to the Contract Manager. Then, Contractor may request to add a new person to the Agreement. A person added to the Agreement is thereafter treated as a person listed in this Agreement and can be offered future work without first offering it to originally listed people.
  - 3) If the person added is an employee of Contractor or an existing subcontractor, Contractor shall provide the added employee's pay rate, classification and resume to Contract Manager, and Contract Manager may approve the new person and rate. Contract Manager approval is only valid if made in writing. In addition, any added person must fit within a classification and corresponding rate already listed in the Agreement. Adding classifications and/or higher rates requires a formal amendment and cannot be accomplished through this process.
  - 4) If the person to be replaced or substituted was identified in the Agreement as a Disabled Veteran Business Enterprise (DVBE) firm, refer to the DVBE paragraph below for changes to DVBEs.
  - 5) If the person added is a new subcontractor, Contractor shall use the process outlined below.

E. Process for Additions, Removal or Substitutions of Subcontractors

The Energy Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by Contractor. Such changes shall be subject to the following conditions:

- 1) If the Energy Commission or Contractor requires the replacement, substitution or addition of a subcontractor, the subcontractor shall be selected using either: (a) A competitive bid process with written evaluation criteria by obtaining three or more bids and advertising the work to a suitable pool of subcontractors including without limitation: Contractor's mailing lists; mass media; professional papers or journals; posting on websites; and telephone or email solicitations; or (b) Non-competitive bid (sole source) process with a specific subcontractor.
- 2) Contractor may also need to comply with Disabled Veteran Business Enterprise requirements for the proposed subcontractor.
- 3) When a subcontractor is proposed to be added, under either a competitive or non-competitive process, Contract Manager shall complete and submit to the Contracts Officer a "Subcontractor Add" form. This form identifies the new subcontractor, resumes, bidding method used to obtain the subcontractor (competitive or non-competitive) and rates. The proposed subcontract can be executed only after the Contract Officer approves the Subcontractor Add form.
- 4) Contractors who are subcontracting with University of California may use the terms and conditions negotiated by the Energy Commission with University of California for their subcontracts. Contractors who are subcontracting with DOE may use the terms and conditions negotiated by the Energy Commission with DOE for their subcontracts.

F. List of Subcontracts:


4. **DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) REQUIREMENTS**

A. Reporting

If Contractor made a commitment to achieve DVBE participation for this Agreement, then Contractor must within 60 days of receiving final payment under this Agreement, certify in a report to the Contract Officer: (1) the total amount the Contractor received under this Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under the Agreement have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. Military & Veterans Code section 999.5(d).

**B. Substitution of DVBE**

Contractor shall use each DVBE identified in its proposal or listed in this Agreement. Contractor understands and agrees that if DVBEs were identified in its proposal or listed in this Agreement, award of this Agreement is based in part on its commitment to use the DVBE subcontractor(s). If Contractor believes an identified DVBE must be replaced or substituted, Contractor shall inform Contract Manager and Contract Officer in writing of the reason for the DVBE replacement. A DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services (DGS). Military and Veterans Code section 999.5 (e). Contractor shall complete revised DVBE certification forms (provided by the Contract Officer) identifying the new DVBE.

**C. Amendment**

This Agreement shall be amended if: a DVBE must be substituted and DGS has given approval; or there are changes to the scope of work that impact the DVBE subcontractor(s) identified in the proposal or listed in this Agreement.

**D. Grounds for Termination; Damages; Penalties**

Failure of Contractor to seek substitution and adhere to the DVBE participation level identified in the proposal or listed in this Agreement may be cause for: termination of this Agreement, recovery of damages under rights and remedies due to the State; and penalties as outlined in Military and Veterans Code section 999.9 and Public Contract Code section 10115.10.

**E. DVBE Name for this Agreement:****5. CHANGES TO THE AGREEMENT****A. Significant Changes**

Significant changes to this Agreement must be approved at an Energy Commission business meeting through a formal amendment. Significant changes include, but are not limited to:

- change of Contractor's legal name
- change of Contractor
- changes in order to disencumber funds
- changes to Exhibit A that reasonably modify the purpose of the Agreement
- changes to Exhibit A that extend the due dates beyond the term of the Agreement
- changes to Exhibit B that increase the amount of the Agreement
- changes to Exhibit B that increase rates or fees

Contractor shall submit a request in writing to the Contract Manager with a copy to the Commission Contracts Officer for any significant change. The Contract Manager will notify the Contractor Project Manager of the appropriate Energy Commission action within ten (10) working days.

**B. Non-Significant Changes**

Changes that are not significant to the Agreement do not need to be approved at an Energy Commission Business Meeting through a formal amendment. These changes shall be documented in a Letter of Agreement, signed by both parties.

## 6. **PERFORMANCE EVALUATION**

Consistent with Public Contract Code Sections 10367 through 10371, the Energy Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Energy Commission shall notify and send a copy of the evaluation to the Contractor within fifteen (15) days. The Contractor shall have thirty (30) days to prepare and send statements to the Energy Commission and DGS defending Contractor's performance. The Contractor's statement shall be filed with the evaluation in the Energy Commission's Contract file and with DGS for a period of thirty-six (36) months and shall not be a public record.

## 7. **REPORTS, DELIVERABLES, AND INFORMATION DISCLOSURE**

### A. Reports and Deliverables

- 1) All **public** reports and deliverables shall be delivered to the Energy Commission Accounting Office address listed in Exhibit F.
- 2) All **confidential** reports and deliverables shall be delivered to the Contracts Officer listed in Exhibit F in a sealed envelope marked "Confidential Deliverable."

### B. See Exhibit I, Attachment 1, Section 11(b).

### C. Limitations on Contractor Disclosure of Agreement Information

- 1) Contractor must receive approval from the Contract Manager before disclosing to any third party the contents of any draft deliverable or report.
- 2) In the event any public statement is made by the Energy Commission as to the role of Contractor or the content of any deliverable or report, the Contractor may, if it believes such statement to be incorrect, state publicly what it believes is correct.
- 3) No record that is provided by the Energy Commission to Contractor for Contractor's use in performing this Agreement and which has been designated as Confidential Information, or is the subject of a pending application for confidential designation, except as provided in Title 20, CCR section 2505 and following (and amendments), shall be disclosed by Contractor, unless disclosure is ordered by a court of competent jurisdiction (Title 20 CCR section 2507.). At the election of the Contract Manager, the Contractor, its employees and any subcontractor shall execute a confidentiality agreement, supplied by the Contract Manager or Commission Contracts Officer.
- 4) Contractor acknowledges that each of its officers, employees, and subcontractors who are involved in the performance of this Agreement will be informed of these restrictions and be directed to abide by the above terms.



D. Limitations on Energy Commission Disclosure of Information Contractor Considers Confidential

- 1) Data provided to the Energy Commission by Contractor, which Data the Energy Commission has not already designated as Confidential Information and which Contractor seeks to have designated as confidential, or is the subject of a pending application for confidential designation, shall not be disclosed by the Energy Commission except as provided in Title 20 CCR Sections 2506 and 2507 (and amendments), unless disclosure is ordered by a court of competent jurisdiction.
- 2) It is the Energy Commission's intent to use and release Project results such as deliverables and Data in a manner calculated to further PIER while protecting proprietary or patentable interests of the parties. Therefore, the Energy Commission agrees not to disclose information that Contractor considers confidential, without first providing a copy of the disclosure document for review and comment by Contractor. Contractor shall have no less than ten (10) working days for review and comment and, if appropriate, to make an application for confidential designation pursuant to Title 20 CCR section 2505 (and amendments) on some or all of the information. The Energy Commission shall consider the comments of Contractor and use professional judgment in revising the disclosure document accordingly.

8. **PUBLIC HEARINGS**

If public hearings on the Scope of Work are held during the period of the Agreement, Contractor will make available to testify the personnel assigned to this Agreement. The Energy Commission will reimburse Contractor for compensation and travel of the personnel at the Agreement rates for the testimony which the Energy Commission requests.

9. **DISPUTES**

In the event of a Contract dispute or grievance between Contractor and the Energy Commission, both parties shall follow the procedure below. Contractor shall continue with the responsibilities under this Agreement during any dispute.

A. Commission Dispute Resolution

- 1) The Contractor shall first discuss the problem informally with the Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Commission Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Commission Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Commission Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the decision, the Contractor may appeal to the second level.

- 2) The Contractor must prepare a letter indicating why the decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Commission Contracts Officer's response. This letter shall be sent to the Energy Commission's Executive Director within ten (10) working days from receipt of the decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Energy Commission of the decision at an Energy Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Energy Commission at a regularly scheduled business meeting. Contractor will be provided with the current procedures for placing the appeal on an Energy Commission business meeting agenda.

B. Binding Arbitration

- 1) Should the Energy Commission's Dispute Resolution procedure above fail to resolve an Agreement dispute or grievance to the satisfaction of either party, the Contractor and Energy Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the AAA commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final and may not be appealed to a court through the civil process. However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later six (6) months after the date of the Agreement's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is California state court.
- 2) The cost of arbitration shall be borne by the parties as follows:
  - a) The AAA's administrative fees shall be borne equally by the parties;
  - b) The expense of a stenographer shall be born by the party requesting a stenographic record;
  - c) Witness expenses for either side shall be paid by the party producing the witness;
  - d) Each party shall bear the cost of its own travel expenses;

- e) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of the award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Agreement funds. Both parties must agree, in writing, to utilize Agreement funds to pay for arbitration costs.

## 10. **TERMINATION**

### A. Purpose

The parties agree that because the Energy Commission is a state entity, it is necessary for the Energy Commission to be able to terminate, at once, upon the default of Contractor and to proceed with the work required under the Agreement in any manner the Energy Commission deems proper. Contractor specifically acknowledges that the termination of the Agreement by the Energy Commission under the terms set forth below is an essential term of the Agreement, without which the Energy Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the termination of the Agreement by the Energy Commission, the Energy Commission has the right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Energy Commission.

### B. Breach

The Energy Commission shall provide the Contractor written notice of intent to terminate due to Contractor's breach. Contractor will have fifteen (15) calendar days to fully perform or cure the breach. In the event Contractor does not cure the breach within fifteen (15) days, the Energy Commission may, without prejudice to any of its other remedies, terminate this Agreement upon five (5) calendar days written notice to Contractor. In such event, Energy Commission shall pay Contractor only the reasonable value of the satisfactorily performed services rendered by Contractor before the notice of termination, as may be agreed upon by the parties or determined by a court of law, but not in excess of the Agreement maximum payable.

### C. For Cause

The Energy Commission may, for cause, and at its option, terminate this Agreement upon giving thirty (30) calendar days advance written notice to Contractor. In such event, Contractor agrees to use all reasonable efforts to mitigate its expenses and obligations. Energy Commission will pay Contractor for services rendered and expenses incurred within thirty (30) days after notice of termination which could not by reasonable efforts of Contractor have been avoided, but not in excess of Agreement maximum payable. Contractor agrees to relinquish possession of equipment purchased for this Agreement with Energy Commission funds to Energy Commission, or Contractor may, with approval of Energy Commission, purchase the equipment as provided by the terms of this Agreement.

The term "for cause" includes, but is not limited to, the following reasons:

- Partial or complete loss of Match Funds;

- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors, or replacement or addition of Key Personnel that fail to perform to the standards and requirements of this Agreement;
- Failure to utilize the DVBE subcontractors/vendors in this Agreement and/or Contractor's proposal;
- Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts Contractor's ability to perform under this Agreement;
- Significant change in State or Energy Commission policy such that the work or product being funded would not be supported by the Energy Commission; or
- In the case of a technical support Agreement, changes in Energy Commission staff such that Energy Commission staff can do the work or product being funded.

D. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. Also, in such event, the Energy Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

**11. WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at any time any of the provisions of this Agreement, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

**12. CAPTIONS**

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

**13. PRIOR DEALINGS, CUSTOM OR TRADE USAGE**

In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

**14. NOTICE**

Legal notice must be given using any of the following delivery methods: U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this clause. This clause is not intended to apply to normal, daily communication between the parties related to progress of the work. This clause applies to situations where notice is required to be given by this Agreement or the parties are asserting their legal rights and remedies.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed until the next business day.

**15. STOP WORK**

The Commission Contracts Officer may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a Project exceeding budget, standard of performance, out of scope work, delay in Project schedule, misrepresentations and the like.

- A. Compliance. Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. An equitable adjustment shall be made by Energy Commission based upon a written request by Contractor. Such adjustment request must be made by Contractor within thirty (30) days from the date of the stop work order.
- C. Canceling a Stop Work Order. Contractor shall resume the work only upon receipt of written instructions from the Commission Contracts Officer.

**16. RIGHTS OF PARTIES REGARDING DELIVERABLES, DATA, AND INTELLECTUAL PROPERTY**

- A. Rights regarding deliverables, data, and intellectual property ("Rights" for purposes of this section 16 only) are set forth in Exhibit I. Exhibit I contains provisions from the Energy Commission's agreement with a federal agency that pays for this Agreement. Regarding Rights, where Exhibit I uses "Government," it refers to the federal agency; Contractor agrees with and grants these Rights to the federal agency. The Energy Commission in its contract with the federal agency has the Rights and obligations of the "Recipient." As such, the Energy Commission agrees in this Agreement, except as provided below, to equally share its "Recipient" Rights with Contractor. Contractor agrees to perform all "Recipient" obligations and mutually grant the Commission "Recipient" Rights.
- B. Access to Data  
Contractor shall provide the Contract Manager and any designated reviewer(s) with a copy of all Data produced under the Agreement, when requested. Such Data shall be retained at the Contractor's facility for inspection, review and possible copying by the Contract Manager for a minimum of three (3) years after final payment unless a longer period of records retention is stipulated.

C. Exclusive Remedy

In the event the Energy Commission intends to publish or has disclosed Data the Contractor considers confidential, the Contractor's exclusive remedy is a civil court action for injunctive relief. Such court action shall be filed in Sacramento County, California.

D. Waiver of Consequential Damages

**IN NO EVENT WILL THE ENERGY COMMISSION BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY FOR THE DISCLOSURE OF CONFIDENTIAL INFORMATION OR INFORMATION CONTRACTOR CONSIDERS CONFIDENTIAL, EVEN IF THE ENERGY COMMISSION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. DAMAGES THAT THE ENERGY COMMISSION WILL NOT BE RESPONSIBLE FOR INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFIT; LOSS OF SAVINGS OR REVENUE; LOSS OF GOODWILL; LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES; DOWNTIME; THE CLAIMS OF THIRD PARTIES INCLUDING CUSTOMERS; AND INJURY TO PROPERTY.**

E. Preservation of Data

All Data shall be preserved by the Contractor at the Contractor's own expense for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated.

F. Destruction of Data

Before the expiration of three (3) years or the stipulated records retention period and before changing the form of or destroying any Data or Trade Secrets, the Contractor shall notify Energy Commission of any such contemplated action and Energy Commission may, within thirty (30) days after said notification, determine whether it desires said Data to be further preserved. If Energy Commission so elects, the expense of further preserving said Data shall be paid for by the Energy Commission. Contractor agrees that Energy Commission may at its own expense, have reasonable access to said Data throughout the time during which said Data is preserved. Contractor agrees to use its best efforts to identify competent witnesses to testify in any court of law regarding said Data or, at Energy Commission's expense, to furnish such competent witnesses.

G. Patent Rights

To the extent allowed by Exhibit I, Patent rights will be the property of Contractor, subject to the Energy Commission retaining a no-cost, nonexclusive, nontransferable, irrevocable, royalty-free, worldwide perpetual license to use or have practiced for or on behalf of the State of California the Subject Invention(s) for governmental purposes. Contractor must obtain agreements to effectuate this clause with all persons or entities, except for the U.S. Department of Energy (DOE), obtaining ownership interest in the patented Subject Invention(s). Previously documented (whether patented or unpatented under the patent laws of the United States of America or any foreign country) inventions are exempt from this sub clause.

H. Energy Commission's Interest in Inventions

If Contractor or any subcontractor perfects a patent application Contractor shall notify the Commission Contract Manager and Energy Commission Contracts Officer.

I. Copyrights

- 1) To the extent allowed by Exhibit I, copyrightable work first produced under this Agreement shall be owned by the Contractor, limited by the license granted to the Energy Commission in 2) below.
- 2) Contractor agrees to grant the Energy Commission a royalty-free, no-cost, nonexclusive, irrevocable, nontransferable, worldwide, perpetual license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable work first produced or composed in the performance of this Agreement.

J. Intellectual Property Indemnity

Contractor warrants that Contractor will not, in supplying work under this Agreement's Scope of Work, knowingly infringe or misappropriate any intellectual property right of a third party, and that it will conduct a reasonable investigation of the intellectual property rights of third parties to avoid such infringement.

Contractor will defend and indemnify Energy Commission from and against any claim, lawsuit or other proceeding, loss, cost, liability or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a deliverable infringes any patent, copyright, trade secret or other intellectual property right of any third party, or (ii) any third party claim arising out of the negligent or other tortious act(s) or omission(s) by the Contractor, its employees, subcontractors or agents, in connection with or related to the deliverables or the Contractor's performance thereof under this Agreement.

**17. BUSINESS ACTIVITY REPORTING**

A. Contractor shall promptly notify the Contract Manager of the occurrence of any of the following:

- 1) A change of address.
- 2) A change in the business name or ownership.
- 3) The existence of any litigation or other legal proceeding affecting this Agreement.
- 4) The occurrence of any casualty or other loss to Project personnel, equipment or third parties.
- 5) Contractor's receipt of notice of any claim or potential claim against Contractor for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Energy Commission's rights.

- B. Contractor shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Energy Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Energy Commission is not satisfied that the new entity can perform as the original Contractor, the Energy Commission may terminate this Agreement as provided in the Termination clause.

**18. REVIEW AND NOTICE OF CONFLICTING TERMS**

Contractor warrants and attests that it has conducted a detailed review of the terms and conditions of its existing related third-party agreements and has identified all known or reasonably foreseeable conflicts with this Agreement's terms and conditions and has disclosed the conflicts in writing to the Energy Commission prior to executing this Agreement. In the event further conflicts are identified, Contractor and Energy Commission agree that these conflicts shall be addressed using the procedure described in the Disputes clause. Nothing in this Agreement is intended to nullify or obviate any prior third-party agreements executed by Contractor. However, the Energy Commission may terminate this Agreement if the conflict impairs or diminishes the value of this Agreement.

**19. ACCESS TO SITES AND RECORDS**

The Energy Commission staff or its representatives shall have reasonable access to all Project sites and to all records related to this Agreement.

**20. ASSURANCES**

The Energy Commission reserves the right to seek further written assurances from the Contractor and its team that the work of the Project under the Agreement will be performed consistent with the terms of the Agreement.

**21. SURVIVAL**

It is understood and agreed that certain Agreement clauses shall survive the completion or termination of this Agreement for any reason. The Agreement clauses include, but are not limited to:

- Recordkeeping, Cost Accounting and Auditing
- Indemnification
- Disputes
- Termination
- Rights of Parties Regarding Deliverables, Data, and Intellectual Property
- Business Activity Reporting
- Access to Sites and Records
- Exhibit I



**22. INTERPRETATION OF TERMS**

This Agreement shall be conducted in accordance with the terms and conditions of the solicitation, if applicable. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the solicitation or proposal, this Agreement shall be considered controlling.

**23. AMENDMENTS**

This Agreement may be amended to make changes, including without limitation; additional funds, additional time, additional or modified tasks, and additional or modified terms. Amendments may be made without competitively bidding, so long as the amendment is exempt from competitive bidding pursuant to Public Contract Code section 10335, Government Code section 11010.5 and the State Contract Manual.

**24. DISCRIMINATION AND HARASSMENT TRAINING**

All employees of Contractor and any subcontractor who provide service under this Agreement and maintain work space at the Energy Commission shall take annual training on the prevention of discrimination and harassment. The Energy Commission shall provide the online training course at no charge to Contractor or subcontractors. However, Contractor and subcontractors shall not invoice for the time spent taking the course. Contractor shall ensure that all employees of Contractor and any subcontractor who provide service under this Agreement and represent the Energy Commission in public hearings and workshops, but do not maintain office space at the Energy Commission, receive training on prevention of discrimination and harassment.

## **EXHIBIT E**

### **Additional Provisions**

#### **1. CONFIDENTIALITY**

**A. Information Considered Confidential**

All Contractor information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

**B. Confidential Deliverables: Labeling and Submitting Confidential Information**

Prior to the commencement of this Agreement, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Commission Contracts Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

**C. Submittal of Unanticipated Confidential Information as a Deliverable**

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of Confidential Information specified in 20 CCR 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

**D. Disclosure of Confidential Information**

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

#### **2. INTELLECTUAL PROPERTY ITEMS DEVELOPED PRIOR TO THIS AGREEMENT**

**A. Intellectual property information is designated in the Attachment to this Exhibit.**

**B. The Contractor gives notice that the items listed in the Attachment to this Exhibit have been developed without Energy Commission or federal funding and prior to the start of this Agreement. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this Agreement, may be necessary. This information will assist the parties to make an informed decision regarding intellectual property rights.**

### 3. **CONFLICT OF INTEREST**

- A. Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest. Contractor shall inform the Contract Manager as soon as a question arises about whether a potential conflict may exist. The Contract Manager and Commission's Chief Counsel's Office shall determine what constitutes a potential conflict of interest. The Energy Commission reserves the right to redirect work and funding on a project if the Commission's Chief Counsel's Office determines that there is a potential conflict of interest.
- B. The Contractor shall submit an economic interest statement (Fair Political Practices Commission's Form 700) from each employee or subcontractor whom the Energy Commission's Chief Counsel's Office, in consultation with the Contract Manager, determines is a consultant under the Political Reform Act and, thus, subject to the requirements and restrictions of the Act. Such determination will be based on the nature and duration of the work to be performed by the employee or subcontractor. The determination as to who is a consultant under the Political Reform Act shall be requested by the Contract Manager before work by the employee or subcontractor begins. Each employee and subcontractor determined to be a consultant under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Energy Commission staff who perform the same nature and scope of work as the consultant.
- C. No person, firm, or subsidiary thereof who has been awarded a consulting services agreement may submit a bid for, nor be awarded an agreement for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services agreement. This does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services agreement which amounts to no more than ten percent (10%) of the total monetary value of the consulting services agreement.

### 4. **PURCHASE OF EQUIPMENT**

- A. The purchase of equipment not identified in this Agreement shall be subject to prior written approval from the Contract Manager and, if applicable, the Budget Reallocations provision in Exhibit B, Section 7.
- B. As between the Energy Commission and Contractor, Contractor shall assume all risk to and liability for all Equipment used during and after this Agreement, including but not limited to risk and liability for maintenance, repair, destruction, and damage.

## EXHIBIT G

### Definitions

Incorporated into these definitions are the definitions in Exhibit I.

1. **Affiliate of the Contractor** means any natural person, corporation, partnership, joint venture, sole proprietorship or other business entity directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Contractor. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by agreement, or otherwise. For purposes of this Agreement, it is presumed that ownership or control of the voting power of more than fifty percent (50%) of the voting stock or partnership interests in an entity constitutes control of that entity.
2. **Agreement Budget** refers to the Energy Commission reimbursable and Contractor's Matching Fund expenditures for that portion of the Project covered by the Agreement.
3. **Agreement Period** is the length of this Agreement between the Energy Commission and the Contractor. The Contractor's Project may coincide with or extend outside the Agreement Period.
4. **Date** means calendar date.
5. **Agreement Start Date** is the date the Contractor may begin work that incurs expenses for which the Energy Commission will reimburse the Contractor. No work may begin until Department of General Services (DGS) approves the Agreement, if required.
6. **Agreement End Date** is the date the Contractor must stop work that incurs expenses for which the Energy Commission will reimburse the Contractor.
7. **Confidential Information** is information Contractor has submitted to the Energy Commission and has satisfactorily identified and which the Energy Commission has agreed to designate as confidential pursuant to Title 20 CCR 2501 and following (and amendments).
8. **Economic Benefit** for a Project co-funded using Energy Commission funds means the realization of economic gain or other tangible benefits by the Contractor or Affiliate of the Contractor (except bona fide third party purchasers of Contractor's commercial products) through the use of Project-Related Products and Rights, including but not limited to, operation, sale, distribution or manufacturing; or by any other transaction, including but not limited to, grant, rent, loan, equity, option, transfer, license or other fee; or by Otherwise Disposing of the Project-Related Products and Rights. The Energy Commission may rely upon professional accounting opinion in making a final determination of the dollar value of Gross Revenues, and such determination shall be the basis for calculating the royalty payment due the Energy Commission.
9. **Gross Revenues** means the gross Sales Price, rentals and other amounts received by Contractor from or on account of the Sale, lease, or other transfer or use of Project-Related Products and Rights, less sales tax paid. Gross Revenues shall be determined as above and in accordance with appropriate Federal cost principles and any Economic Benefit.

10. **Key Partners** are participants in the Project who are not receiving PIER funds or are not providing Match Funds but are integral to the outcome of the Project. Key Partners may be providing space, testing facilities, demonstration sites or a manufacturer or other implementer of the Project results.
11. **Key Personnel** are employees or consultants of the Contractor who are critical to the outcome of the Project. For example, they may have expertise in the particular field, or have experience that is not available from another source. Replacing these individuals may affect the outcome of the Project.
12. **Key Subcontractors** are contractors, subcontractors or vendors to the Contractor and who are critical to the outcome of the Project. As with Key Personnel, Key Subcontractors may have expertise in the particular field, or have experience that is not available from another source and replacement may significantly affect the Project. An employee of the Contractor's subcontractor or vendor may also qualify as "key."
13. **Match Fund Participant** means any party that supplies Match Funds to the Project.
14. **Match Funds** means cash or in-kind (non-cash) contributions provided by Contractor, subcontractors or other parties that will be used in performance of this Agreement.
15. **Materials** means the substances used in constructing a finished object, commodity, device, article or product.
16. **Otherwise Disposing Of** means (1) Project-Related Products and Rights not sold but delivered by the Contractor or Affiliate of the Contractor to others regardless of the basis for compensation, if any; and (2) Project-Related Products and Rights put into use by the Contractor or any third party for any purpose other than testing or evaluation of the Project-Related Products and Rights.
17. **Project** refers to the entire effort undertaken and planned by the Contractor and consisting of the work co-funded by the Energy Commission. The Project may coincide with or extend beyond the Agreement period.
18. **Project-Related Products and Rights** means any and all inventions, discoveries, machines, designs, computer software, products, devices, mechanisms, methods, protocols, processes, algorithms, flowcharts, diagrams, trade secrets, data, copyrights, patents, trademarks, proprietary rights, and the like created or made or discovered or first reduced to practice by the Contractor or other third party as a result, in whole or in part, of the Agreement award(s) and any and all updates, revisions, modification, enhancements, derivations, variations, additions, continuations, renewals, and extensions thereto and all proceeds and products therefrom.
19. **Sale** is sale, license, lease, gift or other transfer of Project-Related Products and Rights.
20. **Sales Price** means Gross Revenues, excluding normal returns and allowances such as sales tax, freight and insurance, if applicable, derived from a Sale.
21. **Subject Invention** means any and all invention or discovery conceived, or first actually reduced to practice in the course of or under the Energy Commission-funded portion of this Agreement (i.e., that portion of this Agreement for which Contractor has invoiced the Energy Commission and received reimbursement) and includes any art, method, process, machine, manufacture design or composition of matter, or any new and useful improvement thereof, whether patented or unpatented, under the patent laws of the United States of America or any foreign country.

22. **Technology** refers to the general subject area where the product or innovation will be used. For example, solar thermal electric generation is a Technology area; direct steam generation is an innovation in this Technology area.
23. A **Trade Secret** is any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented and which is generally known only to certain individuals with a commercial concern and are using it to fabricate, produce or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

**EXHIBIT H****Public Interest Energy Research (PIER) Subcontract Flow-Down Provisions**

The following language must be included in all subcontracts executed by Contractor, but this Exhibit does not contain the entire list of required flow-down provisions. Refer to Exhibit D, Section 3(C)(7) for other flow-down terms. In addition, Contractor must also include applicable provisions from the attached federal terms (Exhibit I), including the ones related to intellectual property. Contractor should use this template and fill in the name of the Contractor and Subcontractor as appropriate in each place where there is a \_\_\_\_\_ blank.

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This Agreement is funded by or funded in part by the California Energy Commission (Energy Commission) Public Interest Energy Research (PIER) Program. \_\_\_\_\_ [Contractor] entered into a prime contract with the Energy Commission. This Agreement between \_\_\_\_\_ [Contractor] and \_\_\_\_\_ [Subcontractor] is a subcontract to the prime contract.

1. **STANDARD OF PERFORMANCE**

\_\_\_\_\_ [Subcontractor] shall be responsible in the performance of \_\_\_\_\_'s [Subcontractor] work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in scientific and engineering research fields. Any costs for failure to meet these standards, or otherwise defective services, which require re-performance, as directed by \_\_\_\_\_ [Contractor], shall be borne in total by the \_\_\_\_\_ [Subcontractor] and not the Energy Commission or \_\_\_\_\_ [Contractor]. In the event the \_\_\_\_\_ [Subcontractor] fails to perform in accordance with the above standard the following will apply:

- A. \_\_\_\_\_ [Subcontractor] will re-perform, at its own expense, any task, that was not performed to the reasonable satisfaction of \_\_\_\_\_ [Contractor]. Any work re-performed pursuant to this clause shall be completed within the time limitations originally set forth for the specific task involved. \_\_\_\_\_ [Subcontractor] shall work any overtime required to meet the deadline for the task at no additional cost to \_\_\_\_\_ [Contractor].
- B. \_\_\_\_\_ [Contractor] shall provide a new schedule for the re-performance of any task pursuant to this clause in the event that re-performance of a task within the original time limitations is not feasible.
- C. In the event \_\_\_\_\_ [Subcontractor] fails to perform in accordance with the foregoing standard of performance, \_\_\_\_\_ [Contractor] and \_\_\_\_\_ [Subcontractor] shall seek to negotiate in good faith an equitable resolution satisfactory to both parties.

2. **RECORDKEEPING, COST ACCOUNTING AND AUDITING**

- A. Recordkeeping. \_\_\_\_\_ [Subcontractor] shall maintain all records, documents or other evidence relating to direct and indirect expenses reimbursed to \_\_\_\_\_ [Subcontractor] hereunder, and to hours of employment on this Agreement by all employees of \_\_\_\_\_ [Subcontractor] for which \_\_\_\_\_ [Contractor] is billed. These records shall be sufficient to reflect all costs claimed to have been incurred in performing this Agreement.

- B. Accounting Procedures. \_\_\_\_\_'s [Subcontractor] costs shall be determined on the basis of the \_\_\_\_\_'s [Subcontractor] accounting system procedures and practices employed as of the effective date of this Agreement. \_\_\_\_\_'s [Subcontractor] accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.
- C. Allowability of Costs.
- 1) Allowable Costs. Allowable costs may include all costs, direct and indirect, incurred in the performance of work and capped as identified in the budget for this Agreement. Costs must be incurred within the term of the Agreement. Factors to be considered in determining whether an individual item of cost is allowable include (i) reasonableness of the item, (ii) allowability of the item to the work, and (iii) the terms and conditions of this Agreement.
  - 2) Unallowable Costs. Some examples of unallowable costs include: contingency costs, imputed costs, fines and penalties, losses on contracts, excess profit taxes, and increased contract rates and fees for this Agreement.

### 3. **AUDIT**

\_\_\_\_\_ [Subcontractor] agrees that the Energy Commission, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. \_\_\_\_\_ [Subcontractor] agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. \_\_\_\_\_ [Subcontractor] agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, \_\_\_\_\_ [Subcontractor] agrees to include a similar right of the State to audit records and interview staff in any subcontract between \_\_\_\_\_ [Subcontractor] and a third party related to performance of this Agreement ("lower tier subcontracts").

### 4. **LIMITATION ON DISCLOSURE OF INFORMATION**

- A. \_\_\_\_\_ [Subcontractor] must receive approval from \_\_\_\_\_ [Contractor] before disclosing to any third party the contents of any draft deliverable or report.
- B. After any document submitted has become a part of the public records of the State, \_\_\_\_\_ [Subcontractor] may, if it wishes to do so at its own expense, publish or utilize the same, and shall include the Legal and Copyright notices required above.
- C. In the event any public statement is made by the Energy Commission as to the role of \_\_\_\_\_ [Subcontractor] or the content of any deliverable or report, \_\_\_\_\_ [Subcontractor] may, if it believes such statement to be incorrect, state publicly what it believes is correct.



- D. No record that is provided to \_\_\_\_\_ [Subcontractor] by the Energy Commission or \_\_\_\_\_ [Contractor] for \_\_\_\_\_'s [Subcontractor's] use in performing this Agreement and which has been designated as confidential information, or is the subject of a pending application for confidential designation, except as provided in Title 20, CCR Section 2505 and following (and amendments), shall be disclosed by \_\_\_\_\_ [Subcontractor], unless disclosure is ordered by a court of competent jurisdiction. At the election of \_\_\_\_\_ [Contractor] or the Energy Commission Contract Manager, \_\_\_\_\_ [Subcontractor], its employees and any lower tier subcontractor shall execute a confidentiality agreement supplied by \_\_\_\_\_ [Contractor] or the Energy Commission.
- E. \_\_\_\_\_ [Subcontractor] acknowledges that each of its officers, employees, and lower tier subcontractors who are involved in the performance of this Agreement will be informed about these restrictions and be directed to abide by the above terms.
- F. Data provided to the Energy Commission by \_\_\_\_\_ [Subcontractor], which data the Energy Commission has not already agreed to keep confidential and which \_\_\_\_\_ [Subcontractor] seeks to have designated as confidential, or is the subject of a pending application for confidential designation, will not be disclosed by the Energy Commission except as provided in Title 20 CCR Sections 2506 and 2507 (and amendments), unless disclosure is ordered by a court of competent jurisdiction.

5. **NO FURTHER ASSIGNMENTS**

\_\_\_\_\_ [Subcontractor] shall not make any assignment of this Agreement to any third party without advance written consent of the \_\_\_\_\_ [Contractor].

6. **NON-DISCRIMINATION**

During the performance of this Agreement, \_\_\_\_\_ [Subcontractor] and any of its lower tier subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. \_\_\_\_\_ [Subcontractor] shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. \_\_\_\_\_ [Subcontractor] shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Energy Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. \_\_\_\_\_ [Subcontractor] shall give written notice of its obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. \_\_\_\_\_ [Subcontractor] shall include the nondiscrimination and compliance provisions of this clause in all subcontracts between \_\_\_\_\_ [Subcontractor] and a lower tier subcontractor to perform work under this Agreement.

**7. STOP WORK**

\_\_\_\_\_ [Contractor] may, at any time, by written notice to \_\_\_\_\_ [Subcontractor], require \_\_\_\_\_ [Subcontractor] to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a Project exceeding budget, standard of performance, out of scope work, delay in Project schedule, misrepresentations and the like.

- A. Compliance. Upon receipt of such stop work order, \_\_\_\_\_ [Subcontractor] shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. An equitable adjustment shall be made by \_\_\_\_\_ [Contractor] based upon a written request by \_\_\_\_\_ [Subcontractor].
- C. Canceling a Stop Work Order. \_\_\_\_\_ [Subcontractor] shall resume the work only upon receipt of written instructions from the \_\_\_\_\_ [Contractor].

**8. TERMINATION**

**[NOTE: SUBCONTRACT MUST CONTAIN TERMINATION RIGHTS OF THE CONTRACTOR SIMILAR TO THE CAUSE/FOR CAUSE OPTIONS BELOW. Contractor may use its own standard termination language as long as Contractor retains the right to terminate with and without cause. Contractor may use the language below if it does not have standard termination language. Contractor may add a right of Subcontractor to terminate, but Subcontractor's right to terminate is not encouraged, so sample language is not included here.]**

This Agreement may be terminated as follows:

- A. In the event of breach by \_\_\_\_\_ [Subcontractor] of the conditions in this Agreement, \_\_\_\_\_ [Contractor] may, without prejudice to any of its legal remedies, terminate this Agreement for cause, upon five days written notice to \_\_\_\_\_ [Subcontractor].
- B. \_\_\_\_\_ [Contractor], may at its option, terminate this Agreement without cause, upon giving 30 days written notice to \_\_\_\_\_ [Subcontractor]. In such event, \_\_\_\_\_ [Subcontractor] agrees to use all reasonable efforts to mitigate its expenses and obligations under this Agreement.

**9. ACCESS TO SITES & RECORDS**

\_\_\_\_\_ [Contractor] and Energy Commission staff or its representatives shall have reasonable access to all Project sites and all records related to this Agreement. \_\_\_\_\_ [Subcontractor] shall ensure the same access rights for all lower tier subcontractors.

**10. CONFLICT OF INTEREST**

- A. Conflicts in General. \_\_\_\_\_ [Subcontractor] agrees to continuously review new and upcoming Projects in which members of the \_\_\_\_\_ [Subcontractor] team may be involved for potential conflicts of interest and report potential conflicts to \_\_\_\_\_ [Contractor].

**11. SURVIVAL**

It is understood and agreed that certain clauses shall survive completion or termination of this Agreement for any reason. The clauses include but are not limited to:

- Recordkeeping, Cost Accounting and Auditing

- Audit
- Access to Sites and Records
- Purchase of Equipment
- Rights of Parties Regarding Deliverables, Data, and Intellectual Property
- Exhibit I.

~~EXHIBIT I~~  
ATTACHMENT 11. FEDERAL FUNDING LANGUAGE

It is understood and agreed upon by the parties to this Contract that partial or whole funding for this Contract is dependent upon a federal agreement DE-FG-05NT42593-A010 and all prior amendments and modifications ("federal agreement"), which has a scheduled budget period end date of 9/30/11, and the following provisions:

- A. **The Energy Commission has attempted in this Exhibit I to set forth the requirements that the federal agreement imposes upon the Contractor. However, this Contract incorporates the federal agreement by reference, and the Contractor agrees to follow all applicable provisions of the federal agreement regardless of whether or not they are expressly stated in this Exhibit I and its Attachments.**
- B. If there are any conflicts between the terms in this Exhibit I and the terms in any of the other Exhibits in this Agreement, to the extent allowed by California law, the ones in this Exhibit I take precedence.
- C. This Contract is subject to any additional restrictions, limitations or conditions enacted by Congress or any statute enacted by Congress that may affect the provisions, terms or funding of this Contract.
- D. It is mutually agreed if Congress does not appropriate sufficient funds for the program, that this Contract shall be amended to reflect any reduction in funds.
- E. The Commission has the option to terminate this Contract at any time upon thirty- (30) days written notice to Contractor. Further details are in accordance with the Paragraph entitled "Termination, Commission's Option."
- F. Federal funds under this agreement are available for expenditure until the federal agreement budget period end date. Extensions to this budget period end date are subject to approval by the U.S. Department of Energy. The Contractor will be notified in writing by the Energy Commission Contracts Officer when extensions are approved by the U.S. Department of Energy.

2. OMB CIRCULARS/FEDERAL REGULATIONS

The Office of Management and Budget (OMB) Circulars and/or federal regulations below are incorporated as part of this Agreement. These Terms and Conditions and any Special Conditions take precedence over the circulars and/or regulations checked below. OMB Circulars may be accessed on the OMB web site at [www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html) or by calling the Office of Administration, Publications Office, at (202) 395-7332.

- ☐ Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- ☐ OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)
- ☒ Title 10 Code of Regulations (CFR) Part 600: DOE Financial Assistance Regulations ([www.pr.doe.gov/f600toc.html](http://www.pr.doe.gov/f600toc.html))
- ☐ OMB Circular A-87: Cost Principles for State, Local and Tribal Governments

- ☐ OMB Circular A-21: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Institutions of Higher Education (public and private colleges and universities)
- ☒ OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)
- ☒ OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations
- ☐ Title 48 CFR, Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations) ([www.access.gpo.gov/nara/cfr/cfr-table-search.html](http://www.access.gpo.gov/nara/cfr/cfr-table-search.html))
- ☐ Other: \_\_\_\_\_
- ☐ None

3. COST SHARING (OCT. 2004)

Cost share associated with the federal funds under this Agreement must come from non-federal sources. By accepting Federal funds under this Agreement, Contractor agrees to be liable for the percentage of cost share identified in this Agreement of the total allowable Project Costs incurred even if the project is terminated or is not funded to its completion.

Total Estimated Project Cost is the sum of the Government share and Contractor share of the estimated project costs. The required minimum cost share percentage is calculated by dividing Contractor cost share amount by the Total Estimated Project Cost.

Failure to provide the minimum required cost share may result in the subsequent recovery of some or all of the federal funds provided under this Agreement.

4. SITE VISITS (OCT. 2004)

The California Energy Commission, the federal awarding agency, and/or their designees have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Contractor must provide and must require subawardees to provide reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

Contractor shall include this provision in all subcontracts or subawards to this Agreement.

5. AGREEMENT ON BUY AMERICAN ACT REQUIREMENTS

- A. The Contractor agrees to comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-1c, popularly known as the "Buy American Act"). The Contractor should review the provisions of the Act to ensure that expenditures made under this agreement are in accordance with it.
- B. It is the sense of the Congress of the United States that to the greatest extent possible all equipment and products purchased with funds made available under this award should be American-made.

6. NON-DISCRIMINATION CLAUSE

This award is subject to the provisions of 10 Code of Federal Regulations (CFR) 1040.1 *et seq.*, Nondiscrimination in Federally Assisted Programs. The Contractor will complete and certify by signature on the DOE Form 1600.5, U.S. DOE "Assurance of Compliance," (Exhibit I, Attachment 2 of this Agreement) its commitment to comply with this law and return it to the Commission Contracts Officer.

7. CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG FREE WORKPLACE REQUIREMENTS

This award is subject to the provisions 10 CFR Part 601, 10 CFR Part 606, and 10 CFR Part 607. The Contractor will complete and certify by signature on the Form "Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug Free Workplace Requirements" (Exhibit I, Attachment 3 of this Agreement) its commitment to comply with these requirements and return it to the Commission Contracts Officer.

8. LOBBYING ACTIVITIES

The contractor or awardee agrees that none of the funds obligated under this agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation. Contractor shall disclose lobbying activities by completing and signing the Standard Form LLL (Exhibit I, Attachment 4 of this Agreement) and return it to the Commission Contracts Officer.

Contractor shall include this provision in all subcontracts or subawards to this agreement.

9. NATIONAL POLICY ASSURANCES

Contractor agrees to adhere to and include in all subcontracts the requirements set forth in the attached "National Policy Assurances" (Exhibit I, Attachment 5 of this Agreement).

10. FEDERAL INTELLECTUAL PROPERTY PROVISIONS

In addition to the intellectual property provisions contained elsewhere in this Agreement, Contractor must conform to the "Federal Intellectual Property Provisions" (Exhibit I, Attachment 6 of this Agreement).

11. PUBLICATIONS (OCT. 2004)

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under this Agreement.
- b. An acknowledgment of California Energy Commission and Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

*Acknowledgment:* "This material is based upon work supported by the California Energy Commission and the U.S. Department of Energy [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

*Disclaimer:* “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the California Energy Commission, the United States Government, nor any agency thereof, nor any employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the California Energy Commission, the United States Government, or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the California Energy Commission, the United States Government, or any agency thereof.”

12. SPECIAL CONDITIONS

A. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS (OCT 2004)

You are restricted from taking any action using Federal funds, which would have an adverse affect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. Prohibited actions include, but are not limited to, demolition of existing buildings, site clearing, ground breaking, construction, and/or detailed design. This restriction does not preclude you from performing Statement of Project Objectives Tasks 1, 2.1 - 2.3, 2.8, 3.1-3.6, 3.8, 3.9, 3.13, 4, 5.1 and 5.4 as contained in the approved proposal to the U.S. Department of Energy.

B. PERFORMANCE OF WORK IN THE UNITED STATES (AUG 2003)

The Contractor agrees that at least 75% of the direct labor cost for the project (including subcontractor labor) will be incurred in the United States unless the Contractor can demonstrate to the satisfaction of the DOE that the United States economic interest will be better served through a greater percentage of work performed outside the United States.

C. REPORTING REQUIREMENTS (OCT 2004)

Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge ([www.osti.gov/bridge](http://www.osti.gov/bridge)), unless the report contains patentable material, protected data or SBIR/STTR data. In addition, these reports must not contain any limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database ([www.osti.gov/energycitations](http://www.osti.gov/energycitations)).

D. NATIONAL SECURITY: CLASSIFIABLE RESULTS ORIGINATING UNDER AN AWARD (OCT 2004)

1. This award is intended for unclassified, publicly releasable research. You will not be granted access to classified information. DOE does not expect that the results of the research project will involve classified information. Under certain circumstances, however, a classification review of information originated under the award may be required. The Department may review research work generated under this award at any time to determine if it requires classification.

2. Executive Order 12958 (60 Fed. Reg. 19,825 (1995)) states that basic scientific research information not clearly related to the national security shall not be classified. Nevertheless, some information concerning (among other things) scientific, technological, or economic matters relating to national security or cryptology may require classification. If you originate information during the course of this award that you believe requires classification under this Executive order, you must promptly:
  - a. Notify the Energy Commission Contracts Officer.
  - b. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified.
3. If you originate information concerning the production or utilization of special nuclear material (i.e., plutonium, uranium enriched in the isotope 233 or 235, and any other material so determined under section 51 of the Atomic Energy Act) or nuclear energy, you must:
  - a. Notify the Energy Commission Contracts Officer.
  - b. Submit the information to the Energy Commission Contracts Officer for classification review within 150 days of the date the Contractor first discovers or first has reason to believe that the information is useful in such production or utilization.
  - c. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified.
4. If DOE determines any of the information requires classification, you agree that the Energy Commission may terminate the award. All material deemed to be classified must be forwarded to the Energy Commission, in a manner specified by the Energy Commission.



## EXHIBIT I ATTACHMENT 2

### ASSURANCE OF COMPLIANCE

DOE F 1600.5

(06-94)

All Other Editions are Obsolete

### U.S. Department of Energy Assurance of Compliance

OMB Control No.

1910-0400

### Nondiscrimination in Federally Assisted Programs

#### OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422 - GTN, Paperwork Reduction Project (1900-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1900-0400), Washington, DC 20503.

(Hereinafter called the "Applicant")

HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L.88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub.L.93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub.L.93-438), Title IX of the Education Amendments of 1972, as amended (Pub.L.92-318, Pub.L.93-568, and Pub.L.94-482), Section 504 of the Rehabilitation Act of 1973 (Pub.L.93-112), the Age Discrimination Act of 1975 (Pub.L.94-135), Title VIII of the Civil Rights Act of 1968 (Pub.L.90-284), the Department of Energy Organization Act of 1977 (Pub.L.95-91), and the Energy Conservation and Production Act of 1976, as amended (Pub.L.94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

#### Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

#### Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs; or other forms of compensation and use of facilities.

#### Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with whom it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, the subrecipient shall be required to sign a written assurance form, however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

#### Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to, the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age, and disability; (3) data regarding covered employment including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to its obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

DOE F 1600.5  
(06-94)  
All Other Editions are Obsolete

OMB Control No.  
1910-0400

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy, Facilities of the Applicant (including the physical plants, building, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U.S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such data of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representation and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signature appears below and who are authorized to sign this assurance on behalf of the Applicant.

#### Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE).

Designated Responsible Employee

\_\_\_\_\_  
Name and Title (Printed to Typed)

(    )    -  
\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant's Name

(    )    -  
\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Address:

\_\_\_\_\_  
Date

Agency Use Only

**EXHIBIT I  
ATTACHMENT 3**

**CERTIFICATIONS REGARDING LOBBYING;  
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS;  
AND DRUG-FREE WORKPLACE REQUIREMENTS**

***CERTIFICATIONS REGARDING LOBBYING;  
DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS;  
AND DRUG FREE WORKPLACE REQUIREMENTS***

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 10 CFR Part 601 "New Restrictions on Lobbying," 10 CFR Part 606 "Governmentwide Debarment and Suspension (Nonprocurement)" and 10 CFR Part 607 "Governmentwide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

**1. LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**2. ADDITIONAL LOBBYING REPRESENTATION**

Applicant organizations which are described in section 501(c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, are not eligible for the receipt of Federal funds constituting an award, grant, or loan.

As set forth in section 3 of the Lobbying Disclosure Act of 1995 as amended, (2 U.S.C. 1602), lobbying activities are defined broadly to include, among other things, contacts on behalf of an organization with specified employees of the Executive Branch and Congress with regard to Federal legislative, regulatory, and program administrative matters.

Check the appropriate block:

The applicant is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986? ☐ Yes ☐ No

If you checked "Yes" above, check the appropriate block:

The applicant represents that after December 31, 1995 it ☐ has ☐ has not engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

**3. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or

State antitrust statutes or commission of embezzlement, theft, forgery, bribery; falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### 4. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub.L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

#### ALTERNATE I (GRANTEES OTHER THAN INDIVIDUALS)

(1) The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace not later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a),(b),(c),(d),(e), and (f).

(2) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance: (Street address, city, county, state, zip code)

☐ Check if there are workplaces on file that are not identified here.

**ALTERNATE II (GRANTEES WHO ARE INDIVIDUALS)**

(1) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant.

(2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

**5. SIGNATURE**

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Name of Applicant: \_\_\_\_\_

Printed Name and Title of  
Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**EXHIBIT I  
ATTACHMENT 4**

**DISCLOSURE OF LOBBYING ACTIVITIES**

Approved by OMB  
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure)

<b>1. Type of Federal Action:</b> a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> a. bid/offer/application ____ b. initial award c. post-award	<b>3. Report Type:</b> a. initial filing ____ b. material change  <b>For material change only:</b> Year ____ quarter ____ Date of last report ____
<b>4. Name and Address of Reporting Entity:</b> ____ Prime      ____ Subawardee Tier____, if Known:  <b>Congressional District, if known:</b>		<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>   <b>Congressional District, if known:</b>
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>7. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b>  \$	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone No.:</b> _____ <b>Date:</b> _____
<b>Federal Use Only</b>		<b>Authorized for Local Reproduction</b> <b>Standard Form - LLL (Rev. 7-97)</b>

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

**EXHIBIT I  
ATTACHMENT 5**

**NATIONAL POLICY ASSURANCES**

**NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (July 2005)**

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

**Nondiscrimination**

By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:

- a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DOE regulations at 10 CFR part 1040.
- b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR part 60.
- c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042.
- d. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE at 10 CFR part 1040.
- e. On the basis of handicap, in:
  1. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041.
  2. The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).

**Live Organisms**

By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:

- a. For human subjects, the Common Federal Policy for the Protection of Human Subjects, codified by the Department of Health and Human Services at 45 CFR part 46 and implemented by DOE at 10 CFR part 745.
- b. For animals:
  1. Rules on animal acquisition, transport, care, handling, and use in 9 CFR parts 1-4, Department of Agriculture rules implementing the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156), and guidelines in the National Academy of Sciences (NAS) "Guide for the Care and Use of Laboratory Animals" (1996), including the Public Health Service Policy and Government Principles Regarding the Care and Use of Animals in Appendix D to the guide.
  2. Rules of the Departments of Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227) implementing laws and conventions on the taking, possession, transport, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531-1543); Marine Mammal Protection Act (16 U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.

**Debarment and Suspension**

The recipient agrees to comply with the requirements regarding debarment and suspension in Subpart C of 10 CFR part 606, which implements E.O. 12549 [3 CFR, 1986 Comp., p. 189]; E.O. 12689 [3 CFR, 1989 Comp., p. 235]; and Sec. 2455 of Federal Acquisition and Streamlining Act of 1994 (Pub. L. 103-355). The recipient also agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the recipient enters into transactions that are "covered transactions" under Subpart B of 10 CFR



**NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (July 2005)**

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

part 606.

**Hatch Act**

The recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

**Environmental Standards**

By signing this agreement or accepting funds under this agreement, the recipient assures that it will:

- a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32.
- b. Identify to the awarding agency any impact this award may have on:
  1. The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process, as implemented by DOE at 10 CFR part 1021.
  2. Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.
  3. Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et. Seq.), concerning protection of U.S. coastal resources.
  4. Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et. seq.), concerning preservation of barrier resources.
  5. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).
  6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).

**Drug-Free Workplace**

The recipient agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

**National Historic Preservation**

The recipient agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 C.F.R. part 800 and Executive Order 11593 [3 CFR, 1971-1975 Comp., p. 559].

**Officials Not to Benefit**

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

**Preference for U.S. Flag Carriers**

Travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under

**NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (July 2005)**

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

**Cargo Preference**

The recipient agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.

**Relocation and Real Property Acquisition**

The recipient assures that it will comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.

**Lobbying**

The recipient assures that it is not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611). Recipients that are 501(c)(4) organizations further agree that they will not engage in such lobbying activities during the term of this award.

**Native American Graves Protection and Repatriation Act of 1990**

The recipient, if it is an organization which controls or possesses Native American remains and associated funerary objects and receives Federal funding even for a purpose unrelated to the Act, agrees to comply with the requirements of 43 CFR part 10, which implements the provisions of 25 U.S.C. 3001 et seq.

**Research Misconduct**

The recipient assures that it will comply with the DOE policy on research misconduct in 10 CFR 733 and the requirements regarding research misconduct in 10 CFR 600.31, both of which implement the government-wide Federal policy on research misconduct developed by the White House Office of Science and Technology Policy.

**EXHIBIT I  
ATTACHMENT 6**

**FEDERAL INTELLECTUAL PROPERTY PROVISIONS**

**1. INTELLECTUAL PROPERTY PROVISIONS**

**CLB-1003  
Intellectual Property Provisions (CLB-1003)  
Cooperative Agreement  
Research, Development, or Demonstration  
Large Businesses, State and Local Governments, and Foreign Entities**

01. FAR 52.227-1	Authorization and Consent (JUL 1995)-Alternate I (APR 1984)
02. FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996) <i>This clause is not applicable if the award is for less than \$100,000, in aggregate.</i>
03. 10 CFR 600.325 Appendix A	Rights in Data - General (OCT 2003) <i>If the contracting officer, in consultation with DOE patent counsel and the DOE program official, determines that delivery of limited rights data or restricted computer software is necessary, Alternates I and II may be inserted into the clause after negotiations with the applicant.</i>
04. FAR 52.227-23	Rights to Proposal Data (Technical) (JUN 1987)
05. 10 CFR 600.325 Appendix A	Patent Rights (Large Business Firms - No Waiver) (OCT 2003)*

NOTE: In reading these provisions, any reference to “contractor” shall mean “recipient,” and any reference to “contract” or “subcontract” shall mean “award” or “subaward.”

\* If a waiver of patent rights is granted, then provisions approved by the DOE patent counsel, in accordance with 10 CFR 784, will be substituted for this Patent Rights provision.

**01. FAR 52.227-1 Authorization and Consent (JUL 1995)-Alternate I (APR 1984)**

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development expected to exceed the simplified acquisition threshold; however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of clause)

**02. FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)**

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim.

Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

(End of clause)

**03. 10 CFR Part 600.325 Appendix A, Rights in Data - General (OCT 2003)****(a) Definitions**

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights, as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, as used in this clause, means data (other than computer software) which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

#### (b) Allocations of Rights

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in--

- (i) Data first produced in the performance of this agreement;
- (ii) Form, fit, and function data delivered under this agreement;
- (iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and
- (iv) All other data delivered under this agreement unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Recipient shall have the right to--

- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, unless provided otherwise in paragraph (d) of this clause;
- (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
- (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take over appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) of this clause.

#### (c) Copyright

(1) Data first produced in the performance of this agreement. Unless provided otherwise in paragraph (d) of this clause, the Recipient may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in data first produced in the performance of this agreement. When claim to copyright is made, the Recipient shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data not first produced in the performance of this agreement and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated in or made part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this agreement.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this award, which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the

markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting

Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subparagraph (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subparagraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the

Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient:

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

- (i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or
- (ii) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software

When data other than that listed in subparagraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and qualify as either limited rights data or restricted computer software, if the Recipient desires to continue protection of such data, the Recipient shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding, the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(h) Subaward/Contract

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with the subaward/contract award without further authorization.

(i) Additional Data Requirements

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at anytime during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause, or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(j) The recipient agrees, except as may be otherwise specified in this award for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this award, inspect at the Recipient's facility any data withheld pursuant to paragraph (g) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

(End of clause)

**04. FAR 52.227-23 Rights to Proposal Data (Technical) (JUN 1987)**

Except for data contained on pages\_(None)\_, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated 03/14/2005, upon which this contract is based.

**05. 10 CFR 600.325 Appendix A, Patent Rights (Large Business Firms - No Waiver) (OCT 2003)**

(a) Definitions

DOE patent waiver regulations, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award. See 10 CFR part 784.

Invention, as used in this clause, means any invention or discovery which is or may be patentable of otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

Subject invention, as used in this clause, means any invention of the Recipient conceived or first actually reduced to practice in the course of or under this agreement.

(b) Allocations of Principal Rights

(1) Assignment to the Government. The Recipient agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the

Recipient under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations. The Recipient, or an employee-inventor after consultation with the Recipient, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulation. Each determination of greater rights under this agreement shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(c) Minimum Rights Acquired by the Government

With respect to each subject invention to which the Department of Energy grants the Recipient principal or exclusive rights, the Recipient agrees to grant to the Government: A nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency); "march-in rights" as set forth in 37 CFR

401.14(a)(J)); preference for U.S. industry as set forth in 37 CFR 401.14(a)(I); periodic reports upon request, no more frequently than annually, on the utilization or intent of utilization of a subject invention in a manner consistent with 35

U.S.C. 202(c)(50); and such Government rights in any instrument transferring rights in a subject invention.

(d) Minimum Rights to the Recipient

(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Recipient fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a part and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the minimum rights acquired by the Government similar to paragraph (c) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(e) Invention Identification, Disclosures, and Reports

(1) The Recipient shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Recipient personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this agreement. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Recipient



shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting

Officer within 2 months after the inventor discloses it in writing to Recipient personnel responsible for patent matters or, if earlier, within 6 months after the Recipient becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to DOE shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Recipient contends in writing at the time the invention is disclosed that it was not so made.

(3) The Recipient shall furnish the Contracting Officer a final report, within 3 months after completion of the work listing all subject inventions or containing a statement that there were no such inventions, and listing all subawards/contracts at any tier containing a patent rights clause or containing a statement that there were no such subawards/contracts.

(4) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under subaward/contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Recipient agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

#### (f) Examination of Records Relating to Inventions

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the

Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this agreement to determine whether--

- (i) Any such inventions are subject inventions;
- (ii) The Recipient has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;
- (iii) The Recipient and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Recipient invention which the Contracting Officer believes may be a subject invention, the Recipient may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

#### (g) Subaward/Contract

(1) The recipient shall include the clause PATENT RIGHTS (SMALL BUSINESS FIRMS AND NONPROFIT ORGANIZATIONS) (suitably modified to identify the parties) in all subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subaward/contract is subject to an

Exceptional Circumstances Determination by DOE. In all other subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Recipient shall include this clause (suitably modified to identify the parties), or an alternate clause as directed by the contracting officer. The Recipient shall not, as part of the consideration for awarding the subaward/contract, obtain rights in the subrecipient's/contractor's subject inventions.

(2) In the event of a refusal by a prospective subrecipient/contractor to accept such a clause the Recipient:

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subrecipient/contractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subaward/contract without the written authorization of the Contracting Officer.

(3) In the case of subawards/contracts at any tier, DOE, the subrecipient/contractor, and Recipient agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by this clause.

(4) The Recipient shall promptly notify the Contracting Officer in writing upon the award of any subaward/contract at any tier containing a patent rights clause by identifying the subrecipient/contractor, the applicable patent rights clause, the work to be performed under the subaward/contract, and the dates of award and estimated completion.

Upon request of the Contracting Officer, the Recipient shall furnish a copy of such subaward/contract, and, no more frequently than annually, a listing of the subawards/contracts that have been awarded.

(5) The Recipient shall identify all subject inventions of a subrecipient/contractor of which it acquires knowledge in the performance of this agreement and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

#### (h) Atomic Energy

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this agreement.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Recipient will obtain patent agreements to effectuate the provisions of subparagraph (h)(1) of this clause from all persons who perform any part of the work under this agreement, except nontechnical personnel, such as clerical employees and manual laborers.

#### (i) Publication

It is recognized that during the course of the work under this agreement, the Recipient or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this agreement. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Recipient, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

#### (j) Forfeiture of Rights in Unreported Subject Inventions

(1) The Recipient shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Recipient fails to report to Patent Counsel within six months after the time the Recipient:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(3) of this clause, whichever is later.

(2) However, the Recipient shall not forfeit rights in a subject invention if, within the time specified in subparagraph

(e)(2) of this clause, the Recipient:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the agreement and delivers the decision to Patent Counsel, with a copy to the Contracting Officer, or

(ii) Contending that the invention is not a subject invention, the Recipient nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy of the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from the Recipient's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this agreement), the Recipient shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (j) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)